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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,787	12/20/2001	Jeffrey E. Fish	KCX-398 (15417)	9570
22827	7590	03/23/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/027,787	<b>Applicant(s)</b> FISH ET AL.	
	<b>Examiner</b> Jenna-Leigh Befumo	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed January 9, 2004 has been entered. Claims 1, 15, and 25 were amended. Claims 1 – 39 are pending.

### ***Drawings***

2. The drawings were received on January 9, 2004. These drawings are acceptable since they remove reference number 10 from the drawing.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1 – 6, 10, 13, 25 – 30, 34, 37, and 39 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bjornberg et al. (4,892,535) for the reasons of record.

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 7, 8, 12, 14 – 18, 20, 22 – 24, 31, 32, 36, and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. for the reasons of record.
7. Claims 1 – 8, 10, 12 – 18, 20, 22 – 32, 34, and 36 – 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. (5,938,650) for the reasons of record.
8. Claims 9, 19, and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. or Baer et al. in view of Tanzer et al. (5,411,497) for the reasons of record.

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9. Claims 11, 21, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. or Baer et al. in view of Taylor et al. (5,332,613) for the reasons of record.

***Response to Arguments***

10. Applicant's arguments filed January 9, 2004 have been fully considered but they are not persuasive. The Applicant argues that the newly added limitation reciting that the "unfused portion of the first and second substrate define the pockets" requires a three-dimensional surface structure be imparted to the laminate, which excludes Bjornberg et al. since the liquid-impervious back sheet is shown as being flat (Response, page 11). However, the newly added phrase does not exclude one of the layers from being flat. In fact, the phrase only requires that the two layer are bonded together in such away that the unfused regions form a pocket. The shape of the pocket is not limited at all and could be formed by two mostly flat layers. There is nothing in the claim that requires that the surfaces has a three dimensional surface. Further, once the pocket is filled with the absorbent material, as taught by Bjornberg, the back sheet will bulge to some degree and take on a three-dimensional shape due to the pressure inside the pocket. Therefore, the rejection is maintained.

11. Additionally, the Applicant argues that it would not be obvious to modify the aspect ratio of the pockets in Baer et al. because Baer et al. has not recognized the aspect ratio of the pockets is not recognized as a result effective variable (Response, pages 12 – 13). Particularly, the Applicant refers to MPEP §2144.05 IIB, which states only result-effective variables can be optimized. However, this section does not state that the prior art itself has to explicitly state that the variable is a result effective variable. Instead, it states that the variable must achieve a recognized result. In this case, the result of changing the aspect ratio of the pockets would be a

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change in the shape of the pockets as well as the total volume within the pockets. Thus, Figures 5 – 7 of Baer et al. which show that the pockets can be produced in different shapes establish that the prior art recognizes that the pockets can be formed in different shapes, and that the aspect ratio of the pockets can be changed. Additionally, it is noted that the pockets in Figures 6 and 7 appear to have an aspect ratio which is greater than 2. However, since the drawings are not necessarily to scale, the exact measurements were not relied on for the rejection. But, these figures would readily indicate to one of ordinary skill in the art that the prior art recognizes that long narrow pockets can be used to contain the particles. Finally, changing the aspect ratio of the pockets results in a change shape. It has been held that a change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, the rejection is maintained.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

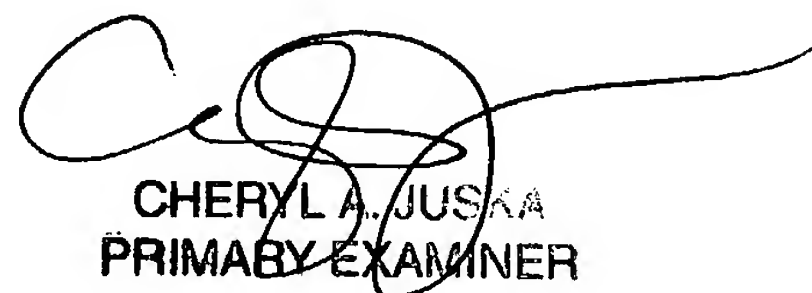
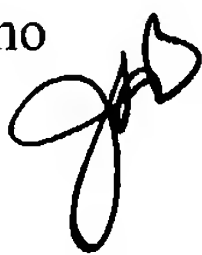
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo  
March 10, 2004



CHERYL A. JUSKA  
PRIMARY EXAMINER